

# Phetheni Nkuna

Director: Executive Management



Phetheni Nkuna is Director: Executive Management. She focuses on employment law and has represented clients (both employers and employees) across different industries in various disputes ranging from dismissal related to misconduct, incapacity and operational requirements; restraints of trade; unfair labour practice; and employment equity. Phetheni also provides advisory and strategic support to clients and has conducted training on different aspects of conflict management and dispute resolution. She represents clients in the CCMA, bargaining councils, and the Labour Court. In addition to the practice of law, Phetheni has given commentary on topical issues across radio and television platforms.

## About Phetheni

Phetheni Nkuna joined Routledge Modise Inc. as a Candidate Attorney in 2013. She was admitted as an attorney on 5 March 2015. She served as an Associate and was promoted to Senior Associate whilst the firm traded under the name, Hogan Lovells. She was subsequently appointed as a Partner with Lawtons Africa in April 2020. She joined Cliffe Dekker Hofmeyr as a Director in October 2020.

Phetheni holds LLB and LLM degrees, Certificate in Advanced Labour Law, and is currently studying towards her Post Graduate Diploma: Business Administration, and Master of Business Administration (MBA) degree with the Gordon Institute of Business Science (GIBS).

## Credentials

### Education

- 2019 LLM (Labour Law), University of Pretoria
- 2017 Certificate in Advanced Labour Law, University of Pretoria
- 2012 LLB, University of Limpopo
- Year of admission as an attorney: 2015
- Registered with the Legal Practice Council
- Post Graduate Diploma: Business Administration, and Master of Business Administration (MBA) degree with the Gordon Institute of Business Science (GIBS), 2020 - 2021.

## Experience

## Contact Phetheni

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## Expertise

[Employment Law](#)

[Government and State-Owned Entities](#)

## Location

Johannesburg

## Language

English

Afrikaans

Sepedi

isiXhosa

isiZulu

siSwati

Xitsonga

- Phetheni's experience ranges from dismissal disputes (misconduct, incapacity and operational requirements) restraints of trade, section 197 transfers, organisational rights and wage disputes, initiating and chairing disciplinary and grievance enquiries, and employment equity. She has represented clients in the CCMA, bargaining councils and the Labour Court.
- She has serviced clients across the logistics, aviation, mining, conservation, medical, courier services, financial services, and information technology sectors. In addition, she has also done work for special units of some government departments.

## News

### [Mental Health in the workplace: Constructive dismissal based on mental ill health?](#)

In the post covid landscape there has been a warranted increased awareness on mental health in the workplace. In *Sanlam Life Insurance Ltd v Mogomatsi and Others (CA 12/2022)*, the Labour Appeal Court (LAC) considered the interplay between a claim for constructive dismissal and mental health.

### [Terminating a fixed term service contract and the transfer of a business as going concern](#)

Does the lapsing or termination of a fixed-term contract for the provision of a particular service give rise to a transfer in terms of section 197 of the Labour Relations Act 66 of 1995 to competitors who were already performing the same service?

### [Global increase trends in the minimum wage rate](#)

There is no universal approach to a minimum wage, or a set appropriate level of a minimum wage. This could perhaps explain why countries such as Austria, Belgium, Denmark, Finland, Italy and Norway do not have a set national minimum wage. Minimum wages are usually laid down by sectoral collective bargaining agreements. Even with negotiated agreements, not every employee will be automatically entitled. In countries such as the UK, Ireland and Malta, the national minimum wage is determined by age. Minimum wages in other countries are determined regionally or per province, this includes countries such as China, Indonesia, Japan and Vietnam. Countries such as Sweden, Switzerland and the UAE do not have set minimum wages.

### [Retrenchments: Transformation, a selection criterion?](#)

When an employer contemplates dismissals based on operational requirements, section 189(1) of the Labour Relations Act 66 of 1995 (LRA) requires the employer to consult any person impacted by the decision, including trade unions whose members may be affected by the proposed retrenchments. The employer and other consulting parties must engage in a meaningful joint consensus-seeking process and attempt to reach consensus on, amongst other things, the method for selecting employees to be dismissed. Where an employer does not comply with a fair procedure, section 189A(13) provides a consulting party with recourse to approach the Labour Court.

### [Post-probation dismissal for failing \(not refusing\) to vaccinate unfair: CCMA award](#)

On 5 April 2022 the CCMA issued an award in the matter of *Zaphia September v Inyosi Empowerment (WECT17050-21)*, where it held that the dismissal of an employee who failed (although not refused) to vaccinate against COVID-19 was both procedurally and substantively unfair.

## Videos

### [Laws adapted to prevent and eliminate harassment in the workplace](#)

Phetheni Nkuna, Director in our Employment Law practice joined eNCA to discuss laws adapted to prevent and eliminate harassment in the workplace.

### [A Changing Workplace: Diversity, Retention and Flexibility](#)

Employment Law experts hosted a webinar titled - A Changing Workplace: Diversity, Retention and Flexibility.

### [Zimbabwean Exemption Permits: What you need to know](#)

Deadline for holders of Zimbabwean Exemption Permits has been extended until 31 December 2023.

### [I tweet what I like](#)

Social media has radically transformed our modes of communication, however, there are inherent dangers, given the public nature of these platforms. Phetheni Nkuna, Director in our Employment Law practice discusses how we should balance the scales between sharing an opinion, fair comment, and defamation of character, with eNCA

### [The importance of confidentiality](#)

As most South African employers formally implement work-from-office or hybrid work policies, both employers and employees must remain mindful of the risk of sexual harassment in virtual and physical work environments.

## Podcasts

### [WOZA Podcast Two - The challenges women in law face today](#)

Join CDH Conversations as we continue to commemorate 100 years of women in law. This series of three episodes, hosted in collaboration with WOZA Women in Law explores the history and vision of women in the legal profession.

### [South Africa's anticipated policy and legislative reform on the employment of foreign nationals](#)

On 28 February 2022, the Minister of Employment and Labour published a Draft National Migration Policy and Employment Services Amendment Bill for public comment. This podcast focuses on the Bill which seeks to regulate and facilitate the employment of foreign nationals. Once enacted, the Minister will be able to introduce quotas for the employment of foreign nationals either across sectors, occupational categories, nationally, or within one or more regions in a sector. Employers of foreign nationals will be required to ascertain that they are entitled to work in South Africa, and to perform the work for which they are employed, satisfy themselves that no other person in South Africa (other than foreign nationals) has requisite skills to fill the vacancy – before recruiting the foreign national, and to prepare a skills transfer plan. Finally, digital labour platforms will be recognised as employers.

### [The best practice regarding 'side hustles' and the workplace](#)

Striking a balance between the demands of a second line of employment, whilst maintaining deliverables in one's primary 9-5, can result in blurred lines, and potentially result in trouble. Phetheni Nkuna, Director in our Employment Law Practice unpacks the best practice regarding 'side hustles' and the workplace with Smile FM.

### [Reflecting on 2021 and navigating 2022](#)

Our Employment Law team hosted their first webinar where they reflected on 2021 and identified key themes for 2022.

### [Insight for employees who are victims of sexual harassment in the workplace](#)

This year, the 16 Days of Activism for No Violence against Women and Children Campaign focused on moving from awareness to accountability.

[All news by Phetheni Nkuna →](#)

## Recognition

- Legal 500 EMEA
  - The Legal 500 EMEA 2023 mentioned Phetheni for employmen
- Africa Legal Awards
  - Africa Legal Awards: Private Practice Rising Star nominee (2020)